

In Defence of "Good Intergovernmentalism"

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Kaarlo Tuori's and Klaus Tuori's account of the the Eurozone crisis is an excellent analysis of all of its major constitutional issues. In the first chapters, the authors set the field in all necessary detail, embedding constitutional history in its economic context. They strongly focus on the distinction between two layers of Europe's economic constitution, the microeconomic (laid down in the Treaty of Rome, and developed by the ECJ) on the one hand, and the macroeconomic layer (introduced with the Maastricht treaty) on the other hand. They correctly depict the macroeconomic constitution as a logical development of the microeconomic one by showing how the two concepts are intertwined, but also by elaborating on their differences and incoherencies, in particular with regard to changing macroeconomic premises over time. In their subsequent analysis of the Eurozone crisis, a moment in which the premises of the macroeconomic constitution have been heavily shaken, the distinction between the micro- and the macroeconomic is valuable to understand the limits of the solutions that have been adopted to tame the effects of the crisis when scrutinized from a broader constitutional perspective.

Having set the field, the authors explain the single crisis measures that have been taken on both, the institutional and the intergovernmental levels, without neglecting the particular role of the ECB, presenting the debates that surrounded them and assessing them in the light of the Pringle decision of the ECJ as well as, even though at a later stage of the book, in the light of national constitutional courts' decisions. More interestingly, they show how the macroeconomic constitution has been realigned as a response to the crisis, in particular how the principle *financial stability* now is understood more broadly than the Maastricht principle of *price stability*, how the Maastricht principles of Member States' *fiscal responsibility* and *fiscal and economic coordination* have been altered and how the principle of *unity* has been weakened, in particular through the Pringle decision allowing for intergovernmental solutions.

In the last part of the book, the authors relate the – to a certain extent technical – legal analysis of the Eurocrisis and its containment measures to broader issues of democracy and social rights. They give an outline of the democracy and legitimacy questions that have been raised, such as Habermas' claim that the crisis reaction institutes a form of 'executive federalism', the problem of technocratic government ('expert bodies') or (German) debates on a 'state of exception'. While these issues are not at the heart of their analysis, they carve out the dilemma between the lack of democratic legitimacy of the crisis measures on one hand and social and cultural developments not being ripe for strengthening democracy on a transnational or rather European level very well. They continue by discussing the difficult role of social rights in the European integration process, both in terms of the micro- as well as the macroeconomic constitution. With regard to the latter, they point to

the ‘economist’ versus ‘monetarist’ debate at the origin of the EMU and how the negligence of the economic pillar as compared to the monetary pillar led to a lack of political or fiscal integration. Competence for fiscal policy with its redistributive function fostering social rights was not transferred to the European level which is why ultimately, social rights remained underdeveloped. Even though the crisis and the realignment of the Maastricht principles could have been an opportunity to put a stronger focus on them, it was, if at all, only marginally seized. Finally, they conclude with a rather pessimistic outlook, expressing a general preference for the EU’s legislative and institutional framework to be further developed rather than intergovernmental solutions being sought.

The authors have undertaken a highly topical and thorough analysis with broad references to EU constitutional law and economic foundations. Their elaboration on the different layers of Europe’s economic constitution is well argued and thought-through. I do, however, disagree with their pessimistic conclusion and in particular with their tendency to reject intergovernmentalism as a means towards further realignment of the macroeconomic principles and towards overall development of the European legal and institutional setting. In my view, the distinction between intergovernmental and institutional, with the former being regarded as inferior given the overall level of integration achieved at the Union level, is misleading. In absence of a European democratic process, intergovernmentalism has one feature that must not be neglected, namely that it constitutes a political process ideally leading to the democratic legitimation of norms. The authors do recognize this while arguing that what has emerged as intergovernmentalism in response to the crisis does not fulfill the two conditions necessary for contributing to democratic legitimation. These conditions are that “[f]irst, executive participation in European policy-making should be subjected to constant supervision by national parliaments and civil societies. And second, bearing in mind the complementary nature of Europe-wide and national democratic procedures, intergovernmentalism and related intermediated legitimation should contribute to rather than destroy socio-cultural prerequisites for European democracy.” (at 218) The authors are surely right to criticize the particular form of intergovernmentalism that has emerged, where decisions have been taken by the executives on national and European levels or delegated to technical bodies, while national parliaments were reduced to, cynically put, theatre. Yet, I do believe that the national legislative process – as troublesome as it might be – is an essential counterweight to expert-dominated policy-making on the European level. Mechanisms to strengthen the role of parliament in the decision-making process of the executive have been developed in the course of the Eurocrisis, such as, for example, through a constitutional amendment in Austria subjecting the decisions made by the Austrian member of the ESM’s Board of Governors to parliamentary control. I share the authors’ doubts about having reached a level of integration at which a Habermasian vision of transnational, pan-European democracy could be achieved. However, I am a little more optimistic about what the crisis has taught us about the political dimension of European integration, be it only by raising awareness about its underdevelopment. An interesting question to pursue now would be how the elements giving the national legislative process democratic legitimacy could be integrated into European decision making. A thought-provoking [proposal](#) for such integration recently has been made in response to [ideas developed by the](#)

[Glienicker Gruppe](#) by a group of French economists, who suggest the creation of a second chamber of the European parliament consisting of delegates from national parliaments. With reference to the book's distinction between the microeconomic and the macroeconomic layers of the European economic constitution, I dare to conclude that while we have accepted that the development of the European microeconomic constitution to a large extent has been driven by the ECJ, we have to accept that the realignment of the principles of the macroeconomic constitution as has become necessary in the course of the crisis is so far-reaching that we should seek to develop 'intermediated legitimation', even if it comes in the form of intergovernmentalism. Today, intergovernmentalism is the best form of legitimation we have at our disposal. To be fair, the authors do allude to the potential of 'good intergovernmentalism' by using the term 'intermediated legitimation', implying that legitimation in this way is indeed possible.

Optimistic or pessimistic visions left aside, this is a great book definitively worth reading and discussing.

